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8 **ARIZONA SUPERIOR COURT**
9 **MARICOPA COUNTY**

11 STATE OF ARIZONA; DAVID P.
12 RATA CZAK, Adjutant General of the State
of Arizona, acting in his official capacity as
13 Director of the Arizona Department of
Emergency and Military Affairs,

14 Plaintiffs,

15 v.

16 COUNTY OF MARICOPA, a political
17 subdivision of the State of Arizona,

18 Defendant.

Case No: CV2008-019301
COMPLAINT AND PETITION FOR
PRELIMINARY INJUNCTION

20 The State of Arizona and the Adjutant General of the State of Arizona, by and
21 through the Arizona Attorney General, for their Complaint herein, allege as follows:

22 1. By willfully and intentionally refusing to abide by the laws of the State of
23 Arizona, the County of Maricopa ("Maricopa County"), acting through its elected officials,
24 has threatened and continues to threaten public health and safety and has endangered and
25 continues to endanger the economic well-being of the State of Arizona.

26 2. A.R.S. §28-8481 and A.R.S. §28-8461 require political subdivisions in the
vicinity of a military airport and in the vicinity of "ancillary military facilities" to adopt land
use plans and enforce zoning regulations that assure development compatible with the high-
noise and accident potential attendant to military airport operations.

1 3. On July 25, 2008, Defendant Maricopa County sent the Attorney General of
2 the State of Arizona a letter (a copy of which is attached as **Exhibit "A"** to this Complaint)
3 confirming that Maricopa County has not developed land use plans or enforced zoning
4 regulations that comply with A.R.S. §28-8481 and A.R.S. §28-8461, and further stating that
5 Maricopa County does not intend to develop land use plans or enforce zoning regulations
6 that comply with those statutes. On information and belief, Maricopa County has granted
7 and, unless restrained by order of this Court, will continue to grant, building permits in
8 accident potential zones and high-noise zones surrounding Luke Air Force Base ("Luke
9 AFB") and its ancillary military facilities, which include Luke Auxiliary Field #1 ("Luke
10 Aux 1") and Gila Bend Air Force Auxiliary Field ("Gila Bend AFAF").

11 4. Maricopa County's failure to comply with A.R.S. §28-8481 and A.R.S. §28-
12 8461, by failing and refusing to adopt a comprehensive general plan and failing and
13 refusing to enforce appropriate zoning regulations, threatens public health and safety and
14 threatens the continued viability of Luke AFB. Closure of Gila Bend AFAF would deprive
15 the U.S. Air Force and the Arizona National Guard of a valuable training facility. Closure
16 of Luke AFB and its affiliated and ancillary military facilities would damage the economy
17 of the entire State of Arizona.

18 **PARTIES, JURISDICTION AND VENUE**

19 5. Plaintiff David P. Rataczak is the Adjutant General of the State of Arizona and
20 as Director of the Arizona Department of Emergency and Military Affairs, which is an
21 agency of the State of Arizona. The Arizona Air National Guard and Arizona Army
22 National Guard are divisions of the Arizona Department of Emergency and Military Affairs.

23 6. Maricopa County is a political subdivision of the State of Arizona.

24 7. This Action is brought, and the jurisdiction of this Court is invoked, under
25 Article 6, §14 of the Constitution of Arizona and A.R.S. §12-123, §12-2021, §12-1801,
26 §12-1831 and §28-8481.

27 8. Venue is proper in Maricopa County pursuant to A.R.S. §12-401 and §12-
28 401(17).

HISTORY OF LUKE AIR FORCE BASE

9. Luke AFB is located in Maricopa County.

10. Luke AFB was established in 1941 to serve as an Army Air Corps training field for advanced training in conventional fighter aircraft. During World War II, Luke AFB graduated more than 12,000 fighter pilots from advanced and operational courses, earning the nickname, "Home of the Fighter Pilot." By early 1944, pilots at Luke AFB had achieved a million hours of flying time.

11. During the 1950s and 1960s, Luke AFB trained thousands of pilots who fought in Korea and Vietnam.

12. In July 1971, Luke AFB received the F-4C Phantom II and assumed its role as the main provider of fighter pilots for Tactical Air Command and fighter forces worldwide.

13. By 1994, Luke AFB had graduated over 55,400 pilots. Essentially all of those pilots were involved in repeated take-offs and landings at Luke AFB and repeated practice landings at Luke Aux 1.

14. Currently, Luke AFB is the largest active-duty F-16 training base in the world, with over 200 F-16s assigned.

15. A true and accurate copy of a map produced by the Arizona Military Compatibility Project showing the Luke AFB Over-Flight Area as of 2002 is attached as **Exhibit "B."**

16. Approximately 40,000 flights operate from Luke AFB annually, and of that total, approximately 3 to 5 percent carry live ordnance.

17. Operational flexibility is necessary for Luke AFB's flying training mission. Student F-16 pilots need access to operating areas, low-level military training routes and the opportunity to fly practice instrument approaches.

18. The U.S. Air Force has identified five operational elements, each critical to the mission of aircraft stationed at Luke AFB: (1) landings and take-offs in either direction from Luke AFB; (2) access to the Barry M. Goldwater Range; (3) practice instrument approaches at Luke Aux 1; (4) "touch and go's" at Gila Bend AFAF; and (5) access to state-wide military training routes. Encroachment puts these operational elements at risk.

LUKE AUX 1

19. Luke Aux 1, which is located in Maricopa County about 15 miles north and west of Luke AFB, was constructed in the 1940s and is used by the United States Air Force in conjunction with Luke AFB for instrument approach training.

20. Student pilots from Luke AFB need to access Luke Aux 1 for instrument approach training and the oval calibration pattern ("LANTIRN") located two miles south of Luke Aux 1, which is used to test the sophisticated equipment that F-16s carry to deliver precision guided munitions to targets in hostile territory.

GILA BEND AFAF

21. Gila Bend AFAF is located in Maricopa County, approximately fifty miles to the south of Luke AFB and adjacent to the Barry M. Goldwater Range ("BMGR"), south of the town of Gila Bend.

22. Aircraft, including F-16s from Luke AFB, routinely use Gila Bend AFAF for practicing visual landing approaches, traffic patterns and simulated emergency engine flameout procedures.

23. Gila Bend AFAF is also used for emergency recoveries of military aircraft that experience malfunctions on BMGR and diversion of aircraft due to factors such as bad weather at their home base, unsafe ordnance, or low fuel.

ARIZONA NATIONAL GUARD

24. The 162nd Fighter Wing of the Arizona Air National Guard is based at Tucson International Airport on a 92-acre site and has over 1,600 personnel (full-time and part-time). Its primary mission is International Military Training ("IMT") for F-16 pilots from countries that purchase F-16s from the United States, including air-to-air and air-to-ground tactical operations, as well as air-to-ground bombing.

25. Arizona Air National Guard F-16s based at Tucson International Airport routinely use Gila Bend AFAF for critical training exercises.

26. The Arizona Army National Guard operates the Western Army Air Training Site ("WAATS") at Silverbell Army Heliport, located on a 161-acre site in rural Pinal County approximately 25 miles northwest of Tucson. The WAATS mission is to conduct

1 flight training, enlisted training, specialty training, and to provide regional simulation
2 support. Flight training is conducted for the OH 58A/C "Kiowa" and AH-64A "Apache"
3 aircraft, and the WAATS has responsibility for all AH-64A training for the Army. Specialty
4 training courses meet unique requirements by offering training specifically designed to
5 enhance or improve an area of unit operations not taught at other Army training facilities.

6 27. Arizona Army National Guard helicopters based at Silverbell Heliport
7 routinely use Gila Bend AFAF for critical training exercises.

8 28. If the Luke Aux 1 were to close, the Arizona Air National Guard would suffer
9 irreparable harm because it uses Luke Aux 1 to train pilots on instrument approaches
10 because of the unique facilities available at Luke Aux 1. Closure of Luke AFB also would
11 cause irreparable harm to the Arizona Air National Guard because Luke AFB serves as an
12 emergency landing facility.

13 29. If the Gila Bend AFAF were to close, the Arizona Air National Guard would
14 suffer irreparable harm because of the importance of this training for its F-16s based at
15 Tucson International Airport. If the Gila Bend AFAF were to close, the Arizona Army
16 National Guard also would suffer irreparable harm because of the importance of this
17 training for its helicopters based at Silverbell Heliport. Closure of Gila Bend AFAF also
18 would cause irreparable harm to the Arizona Air National Guard because it serves as the
19 emergency diversion field for the BMGR.

20 ECONOMIC IMPACT OF MILITARY AIRPORT FACILITIES

21 30. The Luke AFB presence and mission have provided reliable and expanding
22 economic stimuli to the region.

23 31. The importance of Luke AFB to the region's economy became even more
24 apparent with the closure of Williams Air Force Base in 1993, which left Luke AFB as the
25 Phoenix area's only Department of Defense military installation.

26 32. A 2008 report, *Economic Impact of Arizona's Principal Military Operations*,
27 shows that Luke AFB personnel included 5,377 active duty permanent military personnel
28 (4,252 of whom lived off base), 1,699 reserves (all of whom lived off base), 194 rotational

1 personnel, 847 military students, 1,248 department of defense civilian personnel, 916 other
2 civilians, and 6,619 linked retirees.

3 33. The 2008 *Economic Impact* report also shows that military facilities and
4 operations in Arizona contribute substantially to the State's economy (as much as \$9.1
5 billion directly and indirectly) and consequently to the fiscal health of State and local
6 governments.

7 34. Luke AFB will continue to be an important contributor to the national security
8 of the United States and to the economic health of the State of Arizona as long as its
9 mission is not compromised or restricted by incompatible use of lands near Luke AFB and
10 its auxiliary facilities, including Luke Aux 1 and Gila Bend AFAF.

11 **ENCROACHMENT ON LUKE AFB AND LUKE AUX 1 OPERATIONS**

12 35. Before Luke AFB, the area west of the City of Phoenix ("West Valley")
13 experienced relatively slow population growth for many decades as the land was converted
14 from uninhabited Sonoran Desert to large scale agricultural uses.

15 36. The construction and operation of Luke Army Airfield during World War II
16 marked the beginning of a major transformation in the character of development in the area
17 as the previously small communities began growing and became residential alternatives to
18 the more urbanized City of Phoenix. These growth pressures slowly intensified, then
19 accelerated over the past three decades.

20 37. Development around Luke AFB and its auxiliary facilities has raised the issue
21 of encroachment and potential adverse impacts to Luke AFB's mission and continued
22 existence.

23 38. Due to development in the vicinity of Luke AFB, take-offs with live ordnance
24 from the northern runway have been stopped. Consequently, protection of the southern
25 departure corridor is critical to maintaining Luke AFB's mission and continued existence.

26 **AIR INSTALLATION COMPATIBLE USE ZONE PROGRAM**

27 39. Although many Air Force bases were originally sited in remote areas, the rapid
28 growth and spread of major metropolitan areas has resulted in regular and expanding
encroachment by urban development in the vicinity of U.S. Air Force bases.

1 40. Such encroachment often has a serious impact at Air Force facilities where
2 flying is an active part of the mission.

3 41. The U.S. Department of Defense recognized the problem of urban
4 encroachment around installations, and in 1973 initiated the Air Installation Compatible Use
5 Zone ("AICUZ") program to provide local government authorities with information on
6 aircraft accident potential and the impact of aircraft noise on the lands surrounding air
7 installations.

8 42. The AICUZ program creates standard land-use guidelines for areas affected by
9 possible noise exposure and accident potential combinations. The AICUZ program
10 provides local governments with information on aircraft accident potential and the impact of
11 aircraft noise. Local governments can use that information to regulate the use of the land
12 surrounding air bases so as to prevent development that is incompatible with the flying
13 operations of the bases.

14 43. Based on statistical analyses of past aircraft accidents, the Department of
15 Defense developed three AICUZ accident potential zones associated with each runway:
16 "Accident Potential Zone 1" ("APZ1"), "Accident Potential Zone 2" ("APZ2") and "Clear
17 Zone."

18 44. According to the Department of Defense, approximately 67 percent of the 834
19 major accidents at U.S. Air Force Bases from 1968 through 1995 occurred in one of these
20 three zones.

21 45. Noise contours are calculated using a computerized Day-Night Average A-
22 Weighted Sound Level ("DNL") metric and Department of Defense NOISEMAP
23 methodology that produces contours showing the noise levels generated by current aircraft
24 operations. The contours, plotted in increments of 5 decibels ("dB"), range from DNL 65
25 dB to DNL 85+ dB.

26 46. The AICUZ guidelines recommend land uses for property within the accident
27 potential zones and noise contours that are compatible with airfield operations while
28 allowing maximum beneficial use of adjacent properties.

LUKE AFB AICUZ STUDY

47. In 1995, 1997 and 2003, based on its AICUZ studies, the U.S. Air Force issued reports regarding land use that would be compatible with aircraft noise and accident potential around Luke AFB.

48. The impact area for the 2003 AICUZ study includes portions of nine municipalities: Glendale, Peoria, Surprise, El Mirage, Youngtown, Litchfield Park, Goodyear, Avondale, and Buckeye, as well as unincorporated portions of Maricopa County.

49. The 2003 AICUZ report established the APZ1, APZ2 and Clear Zones for each runway at Luke AFB, as well as the "high-noise or accident potential zone" defined by A.R.S. §28-8461.

50. According to the 2003 AICUZ report, each APZ1 and each APZ2 for Luke AFB "possesses a significant potential for accidents."

51. The 2003 AICUZ report also plotted the noise contours for noise generated by aircraft operations at Luke AFB in increments of 5 decibels, in the range from DNL 65 dB to DNL 85+ dB.

ARIZONA MILITARY REGIONAL COMPATIBILITY PROJECT

52. The Arizona Military Regional Compatibility Project developed as a proactive endeavor to convene the stakeholders around each military installation in Arizona – the relevant jurisdictions, base personnel, landowners, and other interested parties – to address land use compatibility issues.

53. The Arizona Military Regional Compatibility Project is the result of Arizona legislation passed in 2001 that appropriated funds to develop comprehensive land use plans in the noise and accident potential zones surrounding active military airports. The project has grown to include support and funding from the United States Department of Defense and Office of Economic Adjustment.

LUKE AFB REGIONAL COMPATIBILITY PLAN

54. The Arizona Military Regional Compatibility Project completed the Western Maricopa County / Luke AFB Compatibility Plan study in March 2001.

55. The Western Maricopa County / Luke AFB Compatibility Plan study was a response to Arizona legislation amending Title 28, Article 7, Airport Zoning & Regulation (A.R.S. §28-8480, §28-8481 and §28-8482) addressing impacts of military airport operations on public health and safety, particularly in high-noise or accident potential zones.

56. The purpose of the Western Maricopa County / Luke AFB Compatibility Plan study was to facilitate the implementation of compatible land uses around Luke AFB and its auxiliary facilities through a cooperative coordinated program among the affected jurisdictions in Maricopa County, including Maricopa County itself, that have the authority and responsibility to regulate land uses within their communities.

57. Some of the goals of the Western Maricopa County / Luke AFB Compatibility Plan study included: (a) the preservation of Luke AFB's military mission; (b) safety, particularly within the accident potential zones in consideration of live ordnance flights from Luke AFB via the range access routes; (c) public health and welfare through land use compatibility and noise mitigation strategies; (d) development of appropriate mitigation strategies to sustain the economic benefits associated with Luke AFB while mitigating negative impacts.

58. The Western Maricopa County / Luke AFB Compatibility Plan stressed public participation and included the participation of key constituent groups, community organizations, Luke AFB representatives, and local political jurisdictions to obtain further input through direct contacts, interviews, and numerous meetings.

59. On information and belief, Maricopa County played a significant role in the Western Maricopa County / Luke AFB Compatibility Plan study.

LUKE AUX 1 JLUS STUDY

60. In 2004, the Arizona Military Regional Compatibility Project completed the Luke Air Force Base Auxiliary Airfield #1 Joint Land Use Study (“Luke Aux 1 JLUS”). A member of the Maricopa County Board of Supervisors was a participant on the Luke Aux 1 JLUS Policy Advisory Committee and a member of the Maricopa County Planning and Development Department was a participant of the Luke Aux 1 JLUS Working Group – Project Team. The Luke Aux 1 JLUS recommended compatible land use criteria for areas

1 surrounding Luke Aux 1 within APZ1 and APZ2, and the Extended APZ2, and the 65 dB
2 noise contour and higher.

3 LUKE GILA BEND AFAF AND BMGR JLUS

4 61. In February 2005, the Arizona Military Regional Compatibility Project
5 completed a Joint Land Use Study for the Gila Bend AFAF and BMGR.

6 62. A member of the Maricopa County Board of Supervisors and a member of the
7 Maricopa County Planning and Development Department were participants on the Policy
8 Advisory Committee and Working Group – Project Team, respectively, for the Joint Land
9 Use Study for the Gila Bend AFAF and for BMGR.

10 63. The Joint Land Use Study for the Gila Bend AFAF and BMGR recommended
11 compatible land use criteria for areas within the Clear Zone, APZ1 and APZ2, and the 65
12 dB noise contour and higher around Gila Bend AFAF.

13 ARIZONA MILITARY AIRPORT LEGISLATION

14 64. Based on the studies that had been performed, the State of Arizona passed
15 legislation to address the issue of residential development and incompatible uses around
16 Arizona's military facilities. The primary statutes, including A.R.S. §28-8481 and A.R.S.
17 §28-8461, were most recently amended in 2004 through the enactment of House Bill 2140
18 and House Bill 2141.

19 65. A.R.S. §28-8481 and A.R.S. §28-8461 requires political subdivisions in the
20 vicinity of a military airport, and in the vicinity of "ancillary military facilities" to adopt
21 land use plans and enforce zoning regulations that assure development compatible with the
22 high-noise and accident potential generated by military airport operations.

23 66. A.R.S. §28-8461 defines "military airport" to include Luke AFB, Davis-
24 Monthan AFB, Marine Corp Air Station ("MCAS") Yuma, Libby Army Air Field ("Libby
25 AAF") at Ft. Huachuca, and Laguna Army Air Field ("Laguna AAF") at Yuma Proving
26 Ground.

27 67. A.R.S. §28-8461 defines "ancillary military facility" to include Luke Aux 1,
28 Air Force Base Auxiliary Field #1, Gila Bend AFAF and MCAS Yuma Auxiliary Field #2.

1 68. Land use compatibility with high-noise and accident potential is defined
2 through a land use compatibility table included in ARS §28-8481(J).

3 69. Under the ARS §28-8481(J) land use compatibility table, residential uses are
4 generally determined incompatible in the high-noise and accident zones, while many non-
5 residential uses are considered compatible in high-noise zones, and certain nonresidential
6 uses are considered compatible in accident zones.

7 70. A.R.S. §28-8481 also regulates land uses in hazard zones and high-noise areas,
8 but allows a landowner to undertake development of property under certain conditions for
9 which a “development plan” was approved before December 31, 2004 or, for lands
10 subsequently added to “territory within the vicinity of a military airport or ancillary military
11 facility,” December 31 of the year the land was added, even though the uses may not be
12 compatible with the regulations under A.R.S §28-8481.

13 71. Under A.R.S. §28-8481 a “development plan” (a) “means a plan that is
14 submitted to and approved by the governing body of the political subdivision pursuant to a
15 zoning ordinance or regulation adopted pursuant to [A.R.S. §9-462 *et seq.*] or [A.R.S. §9-
16 462 *et seq.*]; (b) “includes a planned community development plan, a planned area
17 development plan, a planned unit development plan, a development plan that is the subject
18 of a development agreement adopted pursuant to [A.R.S.] §9-500.05 or §11-1101, a site
19 plan, a subdivision plat or any other land use approval designation that is the subject of a
20 zoning ordinance adopted pursuant to [A.R.S. §9-462 *et seq.*] or [A.R.S. §9-462 *et seq.*];
21 and (c) “means a conceptual plan for development that generally depicts intensities on a
22 particular property that a military airport, as described in paragraph 9, subdivision(a) [of
23 A.R.S. §28-8461], deems is compatible with the operation of the ancillary military facility.”

24 72. Maricopa County is a political subdivision in the vicinity of a “military airport”
25 as defined by A.R.S. §28-8461 with respect to Luke AFB.

26 73. Maricopa County is a political subdivision “with territory in the vicinity” of an
27 “ancillary military facility” as defined by A.R.S. §28-8461 with respect to Luke Aux 1 and
28 Gila Bend AFAF.

1 74. A.R.S. §28-8461 defines the “accident potential zone one,” “accident potential
2 zone two,” “clear zone,” “high-noise or accident potential zone,” for and the “territory in
3 the vicinity” of Luke AFB, Luke Aux 1 and Gila Bend AFAF.

4 75. A true and accurate copy of the map titled “Airport Vicinity Map for Luke Air
5 Force Base” showing a graphic representation of the boundaries, major flight tracks, high-
6 noise or accident potential zone, noise contours, clear zone, accident potential zone 1,
7 accident potential zone 2 for, and territory in the vicinity of Luke AFB is attached as
8 **Exhibit “C.”**

9 76. A true and accurate copy of the map titled “Luke AFB Auxiliary Air Field 1”
10 and prepared by the Arizona State Land Department pursuant to A.R.S. §37-102 and A.R.S.
11 §28-8461 and showing a graphic representation of the noise contours, clear zone, accident
12 potential zone 1, accident potential zone 2 for, and territory in the vicinity of Luke Aux 1 is
13 attached as **Exhibit “D.”**

14 77. A true and accurate copy of the map titled “Gila Bend Auxiliary Air Field” and
15 prepared by the Arizona State Land Department pursuant to A.R.S. §37-102 and A.R.S.
16 §28-8461 and showing a graphic representation of the noise contours, clear zone, accident
17 potential zone 1, accident potential zone 2 for, and territory in the vicinity of Gila Bend Gila
18 Bend AFAF is attached as **Exhibit “E.”**

19 **MARICOPA COUNTY’S FAILURE TO ACT AS REQUIRED BY ARIZONA LAW**

20 78. Under A.R.S. §28-8481(J), the Attorney General is charged with reviewing
21 comprehensive plans submitted by the political subdivisions that impact property in the
22 high-noise or accident potential zones of a military airport or ancillary military facility for
23 compliance with the requirements applicable to zoning and development in the high-noise
24 and accident potential zones as set forth in A.R.S. §28-8481(J).

25 79. For the Attorney General to discharge his duty under A.R.S. §28-8481(J),
26 Maricopa County must adopt a comprehensive plan for property in the high-noise and
27 accident potential zones of Luke AFB, Luke Aux 1 and the Gila Bend AFAF and submit the
28 plan to the Attorney General for review of compliance with A.R.S. §28-8481(J).

1 80. By letter dated July 25, 2008, the Maricopa County Board of Supervisors
2 notified the Attorney General that the Maricopa County comprehensive plan did not and
3 does not comply with A.R.S. 28-8481(J) and that Maricopa County does not intend to adopt
4 a comprehensive plan that complies with the statute.

5 **ISSUING BUILDING PERMITS IN VIOLATION OF A.R.S. §28-8481(J)**

6 81. Upon information and belief, Maricopa County has approved building permits
7 for residential development that do not comply with the requirements for development
8 within the high-noise or accident potential zones established in A.R.S. §28-8481(J) for
9 either Luke AFB, Luke Aux 1 or Gila Bend AFAF, and are not part of a comprehensive
10 plan as required by statute. A true and accurate copy of the map entitled "Luke Air Force
11 Base – Residential Building Permit Activity (by Year) – Luke Air Force Base and Auxiliary
12 Field and Proximity" is attached as **Exhibit "F."** A true and accurate copy of the map
13 entitled "Building Permit Activity Gila Bend AFAF" is attached as **Exhibit "G."**

14 82. Upon information and belief, Maricopa County has approved non-residential
15 building permits that also do not comply with the requirements for development within the
16 high-noise or accident potential zones established in A.R.S. §28-8481(J) for either Luke
17 AFB, Luke Aux 1 or Gila Bend AFAF.

18 83. On information and belief, the planning and zoning staff of Maricopa County
19 has recommended that Maricopa County not grant residential building permits in the high-
20 noise and accident potential zones of Luke Air Force Base, Luke Aux 1 or Gila Bend
21 AFAF.

22 84. On information and belief, the planning and zoning staff of Maricopa County
23 has recommended that Maricopa County deny applications for residential building permits
24 within the high-noise and accident potential zones of Luke Aux 1 because, among other
25 things:

- 26 • There is a potential threat to the public health, safety, and general welfare
27 presented by such a subdivision development within the 65 dB noise contour
28 of Luke Aux 1.
- Such residential development would not be in the best public interest in that it
 may have an adverse impact on the future operations of Luke AFB and its
 mission.

85. On information and belief, contrary to the specific recommendations of the Maricopa County planning and zoning staff, the Maricopa County Board of Supervisors granted residential building permits in the high-noise and accident potential zones of Luke Aux 1.

86. Maricopa County's compliance with A.R.S. §28-8481 and A.R.S. §28-8461 would have prevented encroachment on the Air Force's operations at Luke AFB, Luke Aux 1, and Gila Bend AFAF.

87. Maricopa County's failure to comply with A.R.S. §28-8181 and §28-8461 threatens the U.S. Air Force's continued operations at Luke AFB, Luke Aux 1, and Gila Bend AFAF.

88. Maricopa County's decisions to allow residential development in the high-noise and accident potential zones of Luke AFB and Luke Aux 1 threatens to diminish the value of the U.S. Air Force's easements and operation efficiencies associated with Luke AFB, Luke Aux 1 and Gila Bend AFAF.

COUNT I

(Declaratory Judgment)

89. Plaintiffs incorporate paragraphs 1 through 88 of this Complaint.

90. Plaintiffs bring this cause of action pursuant to A.R.S. §12-1831 and §12-1832 for a judgment declaring that Maricopa County is required by A.R.S. §11-806 and §28-8481(A) to adopt comprehensive and general plans for property in the high-noise and accident potential zones of Luke AFB, Luke Aux 1 and Gila Bend AFAF in compliance with A.R.S. §11-806, §28-8461 and §28-8481(J) and that Maricopa County is required by A.R.S. §28-8481(A) and (C) to adopt and enforce zoning regulations for property in the high-noise and accident potential zones of Luke AFB, Luke Aux 1 and Gila Bend AFAF to assure development compatible with the high-noise and accident potential as set forth in A.R.S. §28-8481(J), and that Maricopa County zoning ordinances that do not comply with A.R.S. §11-806, §28-8461 and §28-8481 are invalid.

1 COUNT II

2 (Mandamus)

3 91. Plaintiffs incorporate paragraphs 1 through 90 of this Complaint.

4 92. Maricopa County is required by A.R.S. §28-8481(A) to adopt comprehensive
5 and general plans for property in the high-noise or accident potential zone to assure
6 development compatible with high-noise and accident potential generated by military
7 airport and ancillary military facilities including Luke AFB, Luke Aux. 1 and Gila Bend
8 AFAF.

9 93. Pursuant to A.R.S. §28-8481(J), Maricopa County is required to incorporate
10 into its general and comprehensive plans the requirements applicable to zoning and
11 development in a high-noise or accident potential zone for development.

12 94. By letter dated July 25, 2008, the Maricopa County Board of Supervisors
13 acknowledged that the Maricopa County Comprehensive Plan did not comply with A.R.S.
14 28-8481(J).

15 95. Upon information and belief Maricopa County has not, as required by A.R.S.
16 §28-8481(A) and (J), adopted comprehensive plans or amendments to control development
17 within the high-noise and accident potentials zones of Luke Air Force Base, Luke Aux 1 or
18 Gila Bend AFAF.

19 96. Upon information and belief Maricopa County has not, as required by A.R.S.
20 §28-8481(A) and (C), adopted zoning regulations for property in the high-noise or accident
21 potential zone to assure development compatible with high-noise and accident potential
22 generated by military airport and ancillary military facilities zones of Luke Air Force Base,
23 Luke Aux 1 or Gila Bend AFAF as set forth in A.R.S. §28-8481(J).

24 97. Maricopa County has not submitted to the Attorney General as provided in
25 A.R.S. §28-8481(I) a comprehensive plan or amendments for property in the high-noise or
26 accident potential zone to assure development compatible with the high-noise and accident
27 potential generated by Luke AFB, Luke Aux 1, or Gila Bend AFAF as required by A.R.S.
28 §28-8481(J) and, on information and belief, Maricopa County does not intend to do so.

98. Pursuant to §28-8481(I) and (J), the Attorney General is charged with reviewing comprehensive plans submitted by the political subdivisions that impacts property in the high-noise or accident potential zone of a military airport or ancillary military facility for compliance with the requirements applicable to zoning and development in the high-noise and accident potential zones as set forth in A.R.S. §28-8481(J), determining non-compliance, and notifying the jurisdiction of non-compliance. In the case of non-compliance, the political subdivision is required to reconsider its action. The Attorney General is authorized under A.R.S. §28-8481(L) to bring an enforcement action if there is an action to reaffirm an approval, adoption or readoption of the general or comprehensive plan or major amendment thereto, by a political subdivision, that is not in compliance with §28-8481(J).

99. For the Attorney General to discharge his duty under A.R.S. §28-8481 (I) and (J), it is necessary that Maricopa County must adopt comprehensive plan amendments for property in the high-noise and accident potential zones of Luke AFB, Luke Aux 1 and the Gila Bend AFAF and submit the plan amendments to the Attorney General for review of compliance with A.R.S. §28-8481(J), but Maricopa County refuses to do so.

100. If Maricopa County continues to refuse to submit a comprehensive plan or amendment for review by the Attorney General pursuant to A.R.S. §28-8481(J), the State of Arizona and the Adjutant General have no adequate remedy at law.

COUNT III

(A.R.S. §28-8481)

101. Plaintiffs incorporate paragraphs 1 through 100 of this Complaint.

102. A.R.S. §28-8481(K) directs the Attorney General to notify a political subdivision by mail if the Attorney General believes that a political subdivision has not complied with A.R.S. §28-8481(J).

103. A.R.S. §28-8481(L), governing enforcement action under the section allows the Attorney General to institute suit in the name of the State in the superior court against a political subdivision that is required to notify the Attorney General pursuant to A.R.S. §28-8481(I).

1 104. A.R.S. §28-8481(I) requires a political subdivision that includes property in the
2 high-noise or accident potential zone of a military airport or ancillary military facility to
3 send notice to the Attorney General of any approval, adoption or readoption of, or major
4 amendment to, the general or comprehensive plan that impacts property in a high-noise or
5 accident potential zone of a military airport or ancillary military facility.

6 105. By letter dated July 25, 2008, the Maricopa County Board of Supervisors
7 transmitted a letter to Attorney General Terry Goddard. In that letter, the Maricopa County
8 Board of Supervisors indicated that Maricopa County had adopted a comprehensive plan,
9 that the comprehensive plan did not comply with A.R.S. §28-8481(J), and that the Attorney
10 General should bring suit under A.R.S. §28-8481(I).

11 106. By letter dated July 25, 2008, Maricopa County requested that the Attorney
12 General send notification to the Maricopa County of Maricopa County's non-compliance
13 with A.R.S. §28-8481.

14 107. The Attorney General has sent notification to Maricopa County by letter dated
15 July 28, 2008 that Maricopa County failed to adopt comprehensive plan amendments as
16 required by A.R.S. §28-8481(A) to address development in the high-noise and accident
17 potential zones as required by A.R.S. §28-8481(J).

18 108. Maricopa County has not amended its comprehensive plan to comply with the
19 requirements of A.R.S. §28-8481(A) and (J) for assuring development compatible with the
20 high-noise or accident potential zones of Luke and Luke Aux 1. Maricopa County's
21 comprehensive plan does not comply with A.R.S. §28-8481 (A) and (J).

22 109. The July 25, 2008 letter from Maricopa County serves as notice of the
23 submission of the existing comprehensive plan to the Attorney General and admits that
24 Maricopa County has not complied with A.R.S. §28-8481(J).

25 110. Maricopa County has indicated in its July 25, 2008 letter that it intends to
26 continue to issue residential building permits in high-noise and accident potential zones of
27 Luke AFB and Luke Aux 1.
28

1 111. Plaintiffs have no adequate remedy at law or otherwise from the harm resulting
2 from Maricopa County continuing to issue building permits in contravention of A.R.S. §28-
3 8461 and §28-8481.

4 112. Plaintiffs will suffer irreparable harm from the continued violation of A.R.S.
5 §11-806, §28-8461 and §28-8481 by Maricopa County's failure to enact comprehensive
6 plan amendments and zoning to control development as required by A.R.S. §11-806, §28-
7 8461 and §28-8481 and the issuance of building permits that do not comply with the
8 development requirements of A.R.S. §28-8481(J).

9 Wherefore Plaintiffs request that the following relief:

10 a. A declaration that Maricopa County is required by A.R.S. §11-
11 806, §28-8461, and §28-8481(A) to adopt comprehensive and general plans for property in
12 the high-noise and accident potential zones of Luke Air Force Base, Luke Aux 1 and Gila
13 Bend AFAF in compliance with A.R.S. §28-8481(J) and that Maricopa County is required
14 by A.R.S. §28-8481(A) and (C) to adopt and enforce zoning regulations for property in the
15 high-noise and accident potential zones of Luke Air Force Base, Luke Aux 1 and Gila Bend
16 AFAF to assure development compatible with the high-noise and accident potential as set
17 forth in A.R.S. §28-8481(J).

18 b. A declaration that Maricopa County zoning ordinances that do
19 not comply with A.R.S. §28-8461 and §28-8481(A), (C) and (J) are void.

20 c. Supplemental relief pursuant to A.R.S. §12-1838 in the form of
21 suspension of non-compliant comprehensive plan and zoning until an A.R.S. §11-806, §28-
22 8461 and §28-8481 *et seq.* compliant comprehensive plan and zoning are adopted.

23 d. An Order requiring Maricopa County to institute the process of
24 adopting comprehensive and general plans for property in the high-noise and accident
25 potential zones of Luke AFB, Luke Aux 1 and Gila Bend AFAF in compliance with A.R.S.
26 §28-8481(J).

27 e. An Order suspending the effectiveness of the non-complaint
28 comprehensive plan and zoning in areas covered A.R.S. §28-8481 until Maricopa adopts a

1 comprehensive plan and zoning compliant with A.R.S. §28-8481 *et seq.* including, without
2 limitation, pursuant to A.R.S. §12-1838 as supplemental relief.

3 f. An Order enjoining Maricopa County from continued violation
4 of A.R.S. §28-8481(A) and (J).

5 g. An Order requiring Maricopa County to pay a penalty of five
6 hundred dollars for each of the first ten days of its violation of Arizona law and five
7 thousand dollars for each day thereafter, all pursuant to §28-8481(L)(4).

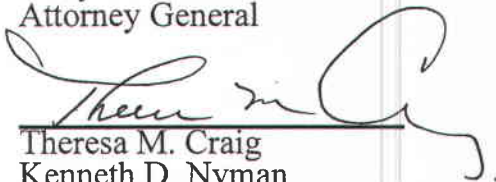
8 h. A preliminary injunction enjoining Maricopa County from
9 issuing building permits that do not meet the requirements of A.R.S. §28-8461 and §28-
10 8481(J).

11 i. A permanent injunction enjoining Maricopa County from
12 issuing building permits that do not meet the requirements of A.R.S. §28-8461 and §28-
13 8481(J).

14 j. An award of plaintiffs' attorneys fees herein pursuant to A.R.S.
15 §28-8481(L)(3) or other applicable law.

16
17 RESPECTFULLY SUBMITTED this ^{9th} 22 day of August, 2008.

18
19 Terry Goddard
Attorney General

20
21 
Theresa M. Craig
Kenneth D. Nyman
Donald J. Baier
Assistant Attorneys General

22
23 Attorneys for the State of Arizona
24
25

26 266430
27
28

VERIFICATION

STATE OF ARIZONA }
COUNTY OF MARICOPA } ss.

David P. Rataczak, having been first duly sworn, deposes and says:

1. I am the Adjutant General for the State of Arizona; I make this verification in my official capacity as acting head of the Arizona Department of Emergency and Military Affairs, an agency of the State of Arizona.

2. I have read the foregoing complaint and know the contents thereof.

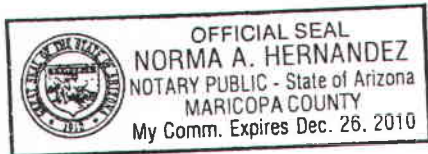
3. Based upon my review of the available information, in my capacity as acting head of the Arizona Department of Emergency and Military Affairs, as well as my personal knowledge of certain of the facts alleged, I am informed and believe that the foregoing allegations are true.

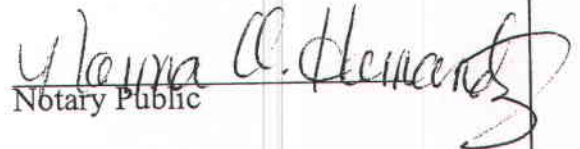
Further affiant saith not.

Dated this 12th day of August, 2008.


David P. Rataczak

SUBSCRIBED AND SWORN to before me this 12th day of August, 2008.




Notary Public

My commission expires:

December 26, 2010



Maricopa County

July 25, 2008

The Honorable Terry Goddard
Arizona Attorney General
Office of the Attorney General
1275 W. Washington Street
Phoenix, Arizona 85007

Re: A.R.S. § 28-8481 and Arizona Attorney General Opinion No. 108-003 (R08-011) issued March 20, 2008.

Dear Attorney General Goddard:

The Maricopa County Board of Supervisors hereby notifies you regarding Maricopa County's lack of authority to deny the issuance of building permits as a result of Arizona Revised Statutes (A.R.S.) § 28-8481, and/or your Arizona Attorney General Opinion No. 108-003 (R08-011) issued March 20, 2008 ("Opinion No. 108-0003") in the area surrounding Luke Air force Base Auxiliary Field # 1 ("AUX # 1).

Maricopa County and its Board of Supervisors want it understood that Luke Air Force Base is vital to the economy of Maricopa County and all of Arizona. Luke's mission is also critical in support of the war on terrorism and to our nation's defense. Maricopa County will not do anything that will jeopardize Luke's mission or the United States Air Force's continued use of Luke Air Force Base and AUX #1.

A.R.S. § 28-8481(A), which was enacted by the legislature and signed into law by the Governor on April 19, 2004, requires Maricopa County to adopt comprehensive and general plans and school district development plans, if applicable, for property in the high noise ("High Noise") or accident potential zones ("APZ") in the vicinity of an ancillary military facility (AUX # 1) to assure development compatible with the high noise and accident potential generated by the ancillary military facility operations that have or may have an adverse effect on public health and safety. Maricopa County has an adopted comprehensive plan. The comprehensive plan is composed of area plans throughout Maricopa County. The plan for the AUX # 1 area is known as the White Tanks Area Plan. The White Tanks Area Plan was last amended in December, 2000. Should Maricopa County amend its comprehensive plan, general plan, and/or school district development plan for the high noise and accident potential zones and then down-zone the non-annexed

The Honorable Terry Goddard
Arizona Attorney General
July 25, 2008
Page 2

property surrounding AUX # 1 as required by the statute, landowners affected will bring suit against Maricopa County for a taking of their properties without due process of law or just compensation.

In addition to the potential exposure, Maricopa County does not believe it is appropriate for any government to expropriate an owner's property without due process of law or adequate compensation. Unfortunately, A.R.S. § 28-8481 does not provide an avenue or funding for either.

In addition to the concerns regarding potentially unlawful takings, A.R.S. § 28-8481 is not a basis for denial of a building permit. Maricopa County has jurisdiction, including building permitting authority, over non-annexed areas around AUX # 1, including areas within the High Noise (within noise contour lines in excess of 80 decibels) and/or APZ1 and APZ2 (the "Restricted Area"). The unincorporated property surrounding AUX # 1 was zoned Rural-43 (R-43) prior to December 31, 2000. If an applicant submits an application for a building permit which complies with all of the requirements of R-43 zoning the applicant is entitled to the permit. R-43 zoning is generally described as permitting the construction of one dwelling unit per one acre. Maricopa County Zoning Ordinance ("MCZO") § 503.1.

On September 23, 2004, shortly after the changes to A.R.S. § 28-8481 were enacted, Deputy County Attorney Terry E. Eckhardt, of the Maricopa County Attorney's Office, notified Ms. Patricia J. Boland of your office of the difficulty the Planning and Development Department of Maricopa County was having reconciling this statute and current statutes and case law as they relate to existing R-43 zoning in the area. He noted that the property surrounding AUX # 1 was already zoned R-43 and that the owners of the real estate believed that they were entitled to build one (1) home per acre and were making inquiries regarding building permits. At that time, Mr. Eckhardt requested that the Attorney General's Office advise Maricopa County as to whether or not it should be issuing building permits for the areas zoned R-43 surrounding AUX # 1. A copy of Mr. Eckhardt's September 23, 2004 correspondence is enclosed.

When no response was forthcoming from your office to the letter of September 23, 2004, Mr. Eckhardt sent another letter on November 3, 2004 to Ms. Boland and yourself. In this letter, Mr. Eckhardt noted that Maricopa County Planning and Development Department had issued a moratorium on granting building permits in the High Noise and AZP areas surrounding AUX # 1. As a result of this self-imposed moratorium, Maricopa had claims asserted against it for taking land-owners' properties without due process of law or compensation.

In Mr. Eckhardt's November 3, 2004 letter, he noted that pursuant to A.R.S. § 28-8481(l) he was notifying you that Maricopa County will begin issuing building permits on the one acre and larger lot split lots in the High Noise and AZP areas surrounding AUX # 1.

The Honorable Terry Goddard
Arizona Attorney General
July 25, 2008
Page 3

Mr. Eckhardt further requested that if you believed Maricopa County's action in issuing the stated building permits put it in non-compliance with A.R.S. § 28-8481, that you should so notify Maricopa County immediately. He further requested a response to his inquiries contained in his September 23, 2004 correspondence. A copy of Mr. Eckhardt's November 3, 2004 correspondence is also enclosed.

On November 8, 2004 you responded by stating that your office has taken "no position regarding the propriety of the County's issuance of building permits within the high noise and accident potential zones of Luke's Auxiliary Field # 1. . . . as nothing in A.R.S. § 28-8481 charges our office with the approval of building permits." A copy of your response of November 8, 2004 is also enclosed. Following receipt of your letter of November 8, 2004, when a request for a building permit was presented for property located within the Restricted Area surrounding Aux # 1, such requests have been treated the same as for property located outside the Restricted Area and if the application complies with all Maricopa County requirements, a building permit has been issued.

We have reviewed your recent Opinion No. 108-003 with our legal counsel. Unfortunately, we do not believe that either A.R.S. § 28-8481 or Opinion No. 108-003 provides any basis for Maricopa County to deny the issuance of building permits in the Restricted Area surrounding AUX # 1.

It is well established that the only powers possessed by county boards of supervisors are those expressly conferred or expressly implied by statute. *Davis v. Hidden*, 124 Ariz. 546, 550, 606 P.2d 36, 40 (App. 1979) citing *Maricopa County v. Southern Pacific Co.*, 63 Ariz. 342, 162 P.2d 619 (1945) and *Transamerica Title Insurance Co. v. Cochise County*, 26 Ariz. App. 323, 548 P.2d 416 (1976). Under Arizona law, counties are granted the power to issue building permits under A.R.S. § 11-321. Under that statute, the board of supervisors for a county shall require a building permit for any construction of a building or an addition to a building at a cost exceeding \$1,000.00, unless a city or town has a separate ordinance. A.R.S. § 11-321(A). Therefore, Maricopa County has responsibility for issuing building permits for the unincorporated areas surrounding AUX # 1.

A.R.S. § 11-808 provides the sole authority for counties to deny building permits. See *P.F. West, Inc. v. Superior Court of State of Ariz., In and For Pima County*, 139 Ariz. 31, 33, 676 P.2d 665, 667 (App. 1984). That statute requires county zoning ordinances to be enforced through the withholding of building permits if the proposed building does not comply with the county zoning ordinances. A.R.S. § 11-808(A); *P.F. West* at 33, 676 P.2d at 667. Specifically, A.R.S. § 11-808 provides for establishing the position of county zoning inspector, and it further admonishes that the zoning inspector:

"shall recognize the limitations placed on his authority by A.R.S. § 11-821, and **shall** issue the permit when it appears that the proposed erection, construction, reconstruction, alteration or use **fully conforms to the zoning ordinance.**"

A.R.S. § 11-808(B) (emphasis added).

We are not aware of any relevant statutes or case law that provide for the denial of a building permit because of a violation of a State law. A.R.S. § 11-808(B) only requires compliance with the county zoning ordinance. We have therefore determined, after advice from outside counsel appointed by the County Attorney, that the authority to deny the issuance of building permits must arise solely out of violations of county ordinances or zoning regulations. See A.R.S. § 11-808(A); see also *P.F. West* at 33, 676 P.2d at 667 and *Davis v. Hidden*, 124 Ariz. 546, 550, 606 P.2d 36, 40 (App. 1979). While there is no direct authority in Arizona, many other state courts have determined that the issuance of building permits is nothing more than a ministerial matter, in which the issuer has no discretion. See *Charter Land Development Corp. v. Hartmann*, 170 A.D.2d 600, 601, 566 N.Y.S.2d 375, 376 (1991); *Evans v. Burruss*, 401 Md. 586, 605, 933 A.2d 872, 883 (2007); *Lockyer v. City and County of San Francisco*, 33 Cal.4th 1055, 1067, 95 P.3d 459, 462-463 (2004); and *James v. County of Kitsap*, 154 Wash.2d 574, 586, 115 P.3d 286, 292 (2005). Therefore, since there is no county ordinance prohibiting construction and the proposed building conforms to the zoning ordinance, Maricopa County has no authority to deny a building permit to property located within the Restricted Area surrounding AUX # 1.

In *Davis v. Hidden*, 124 Ariz. 546, 606 P.2d 36, (App. 1979), the Arizona Court of Appeals addressed the gap that exists between development standards that originate in State law and the capacity of a county to enforce them by way of issuance/denial of building permits. The issue in that case was the authority of a county to deny a residential building permit because a proposed septic tank was contrary to State law. *Davis* at 548, 606 P.2d at 38. The court held that although a county has the authority to require compliance with State laws as a predicate for the issuance of a building permit; it can only exercise that authority by enacting a county ordinance. *Id.* A county is entitled to refuse a building permit only where a county ordinance so provides. *Id.* at 549, 606 P.2d at 39 (emphasis added). Specifically, the Court stated:

“[a]s there is no county ordinance or regulation linking septic tank sanitation to the issuance of building permits, we hold that the zoning inspector and thus the board of supervisors were without authority to refuse the issuance of a building permit to appellant upon the proposed use of septic tank sanitation.”

Id. at 550, 606 P.2d at 40.

Similarly, while A.R.S. § 28-8481 provides restrictions on development around certain military areas and requires that any development in the area be compatible with the high noise and accident potential, it does not authorize counties to deny building permits as a method of enforcement. As in the situation addressed in *Davis*, Maricopa County, under its current zoning ordinance, is not authorized to enforce the State standards for

The Honorable Terry Goddard
Arizona Attorney General
July 25, 2008
Page 5

development in the high noise and accident potential zones based solely on the State restrictions. Maricopa County cannot deny a building permit if the proposed structure is in compliance with the existing county zoning ordinance. Thus, as long as a proposed structure does not violate the requirements of R-43 zoning or any other county ordinance, Maricopa County does not have the authority to deny a building permit and will continue to issue building permits when requested.

A.R.S. § 28-8481(A) requires Maricopa County to adopt a comprehensive plan, a general plan, and/or a school district development plan, if applicable, for property in any high noise and/or accident potential zone. It further requires Maricopa County to adopt and enforce zoning regulations for property in the high noise or accident potential zone to assure development compatible with the high noise or accident potential generated by AUX # 1 that have or may have an adverse effect on public health and safety. To date, Maricopa County has not done so. Should Maricopa County amend its comprehensive plan, general plan, and/or school district development plan for the high noise and accident potential zones and then down-zone the non-annexed property surrounding AUX # 1 as required by the statute, landowners affected would bring suit against Maricopa County for a taking of their properties without due process of law or just compensation. Since the enactment of A.R.S. § 28-8481(A) did not appropriate any funds for the purchase of property, paying any affected landowner would amount to an unfunded mandate and a preemption of local authority.


The purpose of this letter is to advise you pursuant to A.R.S. § 28-8481 (K) that Maricopa County has no alternative, so as not to deprive land owners of their property without due process of law, but to continue to issue residential building permits on the one acre and larger legal lots in the high noise and accident potential zones surrounding AUX # 1, provided the applicant complies with all of the requirements of Maricopa County. The Maricopa County Board of Supervisors is concerned that if it does not continue to issue building permits, landowners will assert that the down-zoning of their property, in view of the property's location and utility, essentially renders the property worthless. Therefore, until a court of competent jurisdiction enjoins Maricopa County from taking such action, it will continue to do so.

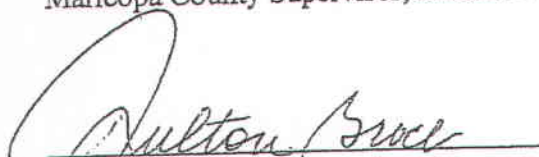
If you disagree with Maricopa County's position that it does not have any basis under the law to discontinue to issue building permits, please notify us as provided in A.R.S. § 28-8481(K) of any basis under which you have probable cause to believe that Maricopa County has not complied with § 28-8481(J). We would assume that under such circumstance, your office would take action under the statute to enjoin Maricopa County from doing so in the future.


While we understand that this is a difficult issue for all concerned elected officials at the federal, state and local levels, we do not have the luxury of picking and choosing only convenient and non-controversial issues to address. As public servants, we have a responsibility to resolve all issues before us, not just the politically expedient.


The Honorable Terry Goddard
Arizona Attorney General
July 25, 2008
Page 6


Please be advised that if we have not heard from your office within ten (10) calendar days of the date of this letter, Maricopa County will file an action for declaratory relief against the State of Arizona to have this matter finally decided by the courts.


Andrew Kunasek, Chairman
Maricopa County Supervisor, District 3


Fulton Brock
Maricopa County Supervisor, District 1


Don Stapley
Maricopa County Supervisor, District 2


Max W. Wilson
Maricopa County Supervisor, District 4


Mary Rose Wilcox
Maricopa County Supervisor, District 5

Enclosures



Maricopa County Attorney

RICHARD M. ROMLEY

September 23, 2004

Patricia J. Boland
Assistant Attorney General
Office of the Attorney General
1275 West Washington Street
Phoenix, Arizona 85007

Re: H.B. 2141

Dear Ms. Boland:

This letter is to confirm our phone conversation of September 21, 2004. I advised you at that time that the Planning and Development Department of Maricopa County, which I represent, is having a great deal of difficulty reconciling the new provisions of A.R.S. § 28-8481 (as created by the above captioned legislation) with current statutes and case law, especially as they relate to existing Rural-43 (1 house per acre) zoning in noise zones and accident potential zones surrounding Luke Air Force Auxiliary Airfield #1.

The property surrounding the Auxiliary #1 is already zoned for 1 house per acre. Current statute allows property owners to split their property into 5 or fewer parcels without seeking permission or authority from Maricopa County. So long as subsequent owners are not acting in concert, split properties can again be split until all property is split into tracts of 1 acre or more. All of this can be done without the approval or permission of Maricopa County, as the zoning already exists and has existed for many years.

The owners of the subject real estate believe that they are entitled to build 1 home per acre and are seeking or inquiring as to building permits to do so. As you are aware, the issuance of a building permit is an administrative act by a unit of government; as long as the person seeking the permit has complied with all laws, rules and regulations pertaining to the issuance of such permit, the governmental unit does not have the discretion to refuse to issue such permit. We are asking the Attorney General's Office to advise us whether or not we should be issuing building permits for the areas zoned R-43 surrounding Auxiliary #1.

DIVISION OF COUNTY COUNSEL

222 N. CENTRAL AVENUE, SUITE 1100 • PHOENIX, AZ 85004

(602) 506-2541 • TDD (602) 506-4352 • FAX (602) 506-8567 • www.maricopacountvattorney.org

Ms. Patricia J. Boland
September 23, 2004
Page 2

In addition A.R.S. § 28-8481(U) prohibits a political subdivision from permitting or approving the division of property in the noise and accident potential zones into lots of 4 acres or less. Maricopa County will not approve any subdivision plan that creates building lots of 4 acres or less. However, as previously stated, a property owner does not have to seek county authority to split the lots down to the existing zoning and once they do that we believe that we are required to issue a building permit, provided the conditions for a permit are met.

As we discussed on the phone, we believe there may be a conflict between the new legislation and the county's responsibilities vis-à-vis pre-existing property entitlements. We would ask that you advise us as to your position on this matter as the statute requires us to notify you of our compliance with the statutes.

Very truly yours,

MARICOPA COUNTY ATTORNEY'S OFFICE
Division of County Counsel


Terry E. Eckhardt
Deputy County Attorney

TEE/emt

cc: Joy Rich, Director, Planning & Development
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Maricopa County Attorney

RICHARD M. ROMLEY

Hand-Delivered

November 3, 2004

Honorable Terry Goddard, Arizona Attorney General
Ms. Patricia J. Boland, Assistant Attorney General
Office of the Attorney General
1275 West Washington Street
Phoenix, Arizona 85007

Re: H.B. 2141

Dear Mr. Goddard and Ms. Boland:

As you are aware, I sent you a letter dated September 23, 2004 (copy enclosed) detailing the concerns Maricopa County has with trying to implement the mandates contained in the above-referenced legislation as it relates to Luke Air Force Base Auxiliary Field #1.

Pending further analysis of the applicability of the new legislation to building permits the Maricopa County Planning and Development Department issued a moratorium on granting building permits in the high noise and accident potential zones as defined in the statute, A.R.S. § 28-8461.

The purpose of this letter is to advise you pursuant to A.R.S. § 28-8481(l) that Maricopa County will begin issuing residential building permits on the one acre and larger lot split lots in the high noise and accident potential zones surrounding Luke Air Force Base Auxiliary Field #1 seventy-two hours after delivery of this letter to your office.

Pursuant to the statute if you believe our action in issuing the stated building permits puts us in non-compliance with A.R.S. § 28-8481, you should so notify us within seventy-two (72) hours of the delivery of this letter to you.

DIVISION OF COUNTY COUNSEL

222 N. CENTRAL AVENUE, SUITE 1100 • PHOENIX, AZ 85004

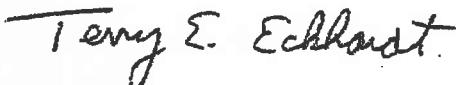
(602) 506-8541 • TDD (602) 506-4352 • FAX (602) 506-8567 • www.maricopacountyattorney.org

Honorable Terry Goddard, Arizona Attorney General
Ms. Patricia J. Boland, Assistant Attorney General
November 3, 2004
Page 2

In addition, we would respectfully request a response to the issues set forth in our letter of September 23, 2004.

Very truly yours,

MARICOPA COUNTY ATTORNEY'S OFFICE
Division of County Counsel



Terry E. Eckhardt
Deputy County Attorney

TEE/emt

cc: Joy Rich, Director, Planning & Development
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MARICOPA COUNTY
ATTORNEY'S OFFICE

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

November 8, 2004

Terry E. Eckhardt
Deputy County Attorney
Maricopa County Attorney's Office
222 North Central Avenue, Suite 1100
Phoenix, AZ 85004-2206

Re: H.B. 2140 and H.B. 2141

Dear Mr. Eckhardt:

I am in receipt of your letters of November 3, 2004 and September 23, 2004 regarding interpretation of A.R.S. § 28-8481, as amended in the last legislative session. We have also received numerous inquiries by telephone and mail from private parties regarding the propriety of Maricopa County's issuance of building permits for property surrounding Luke Air Force Base's Auxiliary Airfield #1.

I share your concerns regarding the need to protect Arizona's military bases and ancillary military facilities. Your actions demonstrate your serious commitment to the requirements contained in A.R.S. § 28-8481 that political subdivisions ensure that development surrounding military airports and ancillary military facilities is compatible with the existence of those airports and facilities.

As you know, this Office has taken no position regarding the propriety of the County's issuance of building permits within the high noise and accident potential zones of Luke's Auxiliary Field #1. I enthusiastically support the County taking an aggressive position to protect Auxiliary Field #1. However, nothing in A.R.S. § 28-8481(l) charges this Office with the approval of building permits. We believe, therefore, that the questions posed in your letters and by various property owners are best answered by the County.

Sincerely,

Terry Goddard
Arizona Attorney General

ARIZONA MILITARY REGIONAL COMPATIBILITY PROJECT WESTERN MARICOPA COUNTY/LUKE AIR FORCE BASE



OVERFLIGHT AREA

LEGEND

- Luke Air Force Base
- Military Airport (ARS 28-6461)
- Clear Zone
- Accident Potential Zone I
- Accident Potential Zone II
- Departure Track / Flight Path

Noise Contours

- 65 Ldn
- 70 Ldn
- 75 Ldn
- 80 Ldn

- Highways - Dashed line denotes possible future alignment
- Major and Minor Arterials

NOTE: The width of the flight tracks vary up to 2 miles on each side of the centerline of each flight track.

Sources:

Luke Air Force Base, June 2002
 Federal Aviation Administration, June 2002
 Arizona Department of Transportation, June 2002
 Arizona Department of Transportation, June 2002
 Arizona Department of Transportation, June 2002



MARICOPA
COUNTY

SURPRISE

EL
MESA

PHOENIX

GLendale

LITCHFIELD
PARK

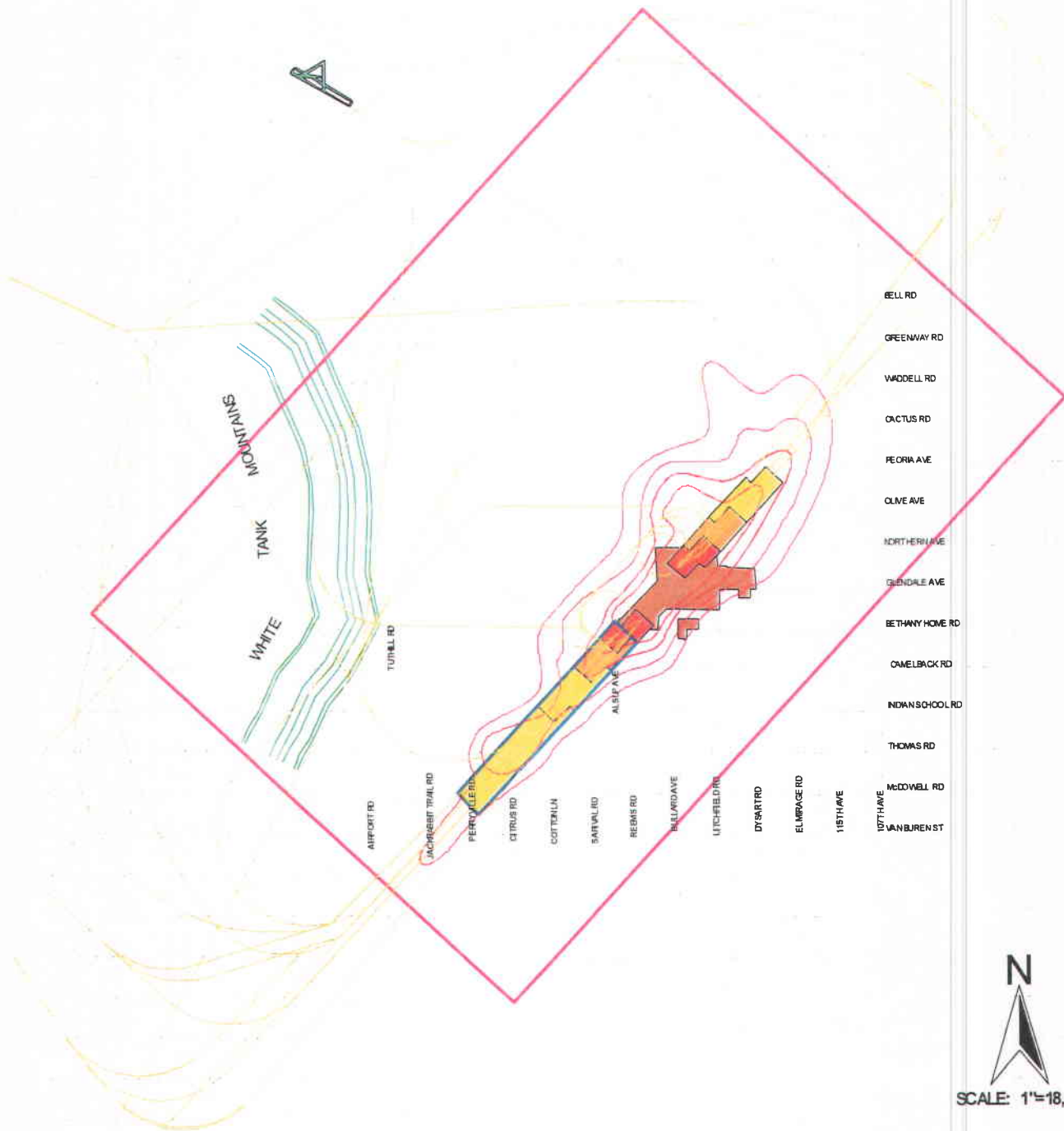
AVENUE

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Legend

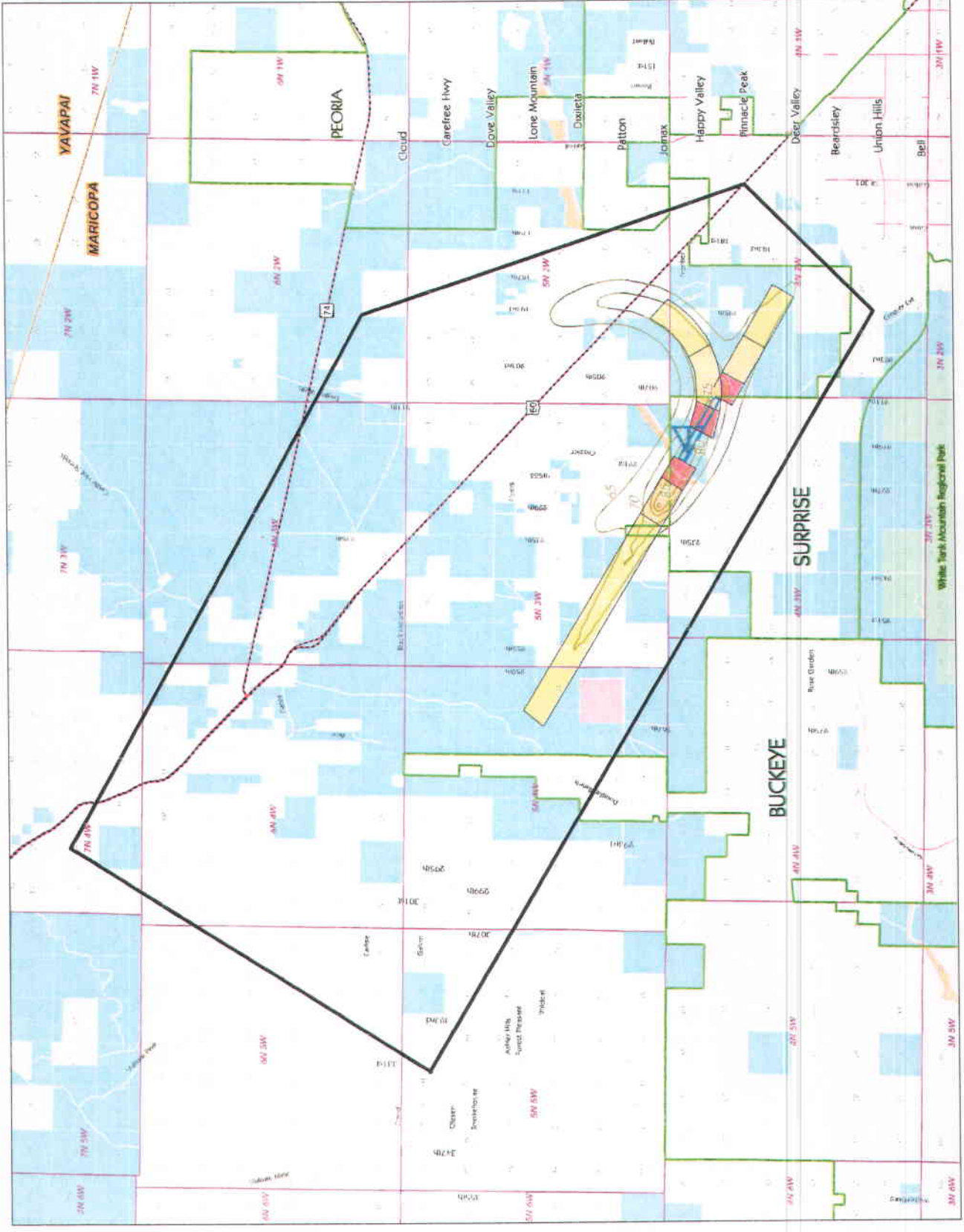
—	LUKE AFB BOUNDARY	 	CLEAR ZONE
—	MAJOR FLIGHT TRACKS	 	ACCIDENT POTENTIAL ZONE 1
—	TERRITORY IN THE VICINITY OF A MILITARY AIRPORT	 	ACCIDENT POTENTIAL ZONE 2
—	HIGH NOISE OR ACCIDENT POTENTIAL ZONE		
—	NOISE CONTOURS		

*LINE WIDTHS ARE GRAPHIC REPRESENTATIONS ONLY

AIRPORT VICINITY MAP FOR LUKE AIR FORCE BASE

THIS MAP FULFILLS THE STATUTORY REQUIREMENTS UNDER ARIZONA REVISED STATUTE 28-8482 AND 8483

AS OF 20020520



LUKE AFB AUXILIARY AIR FIELD 1

Territory in the Vicinity
Luke AFB
Auxiliary Air Field 1

Luke Aux -1 AICUZ
ZONE
Accident Potential Zone 1
Accident Potential Zone 2
CLEAR ZONE

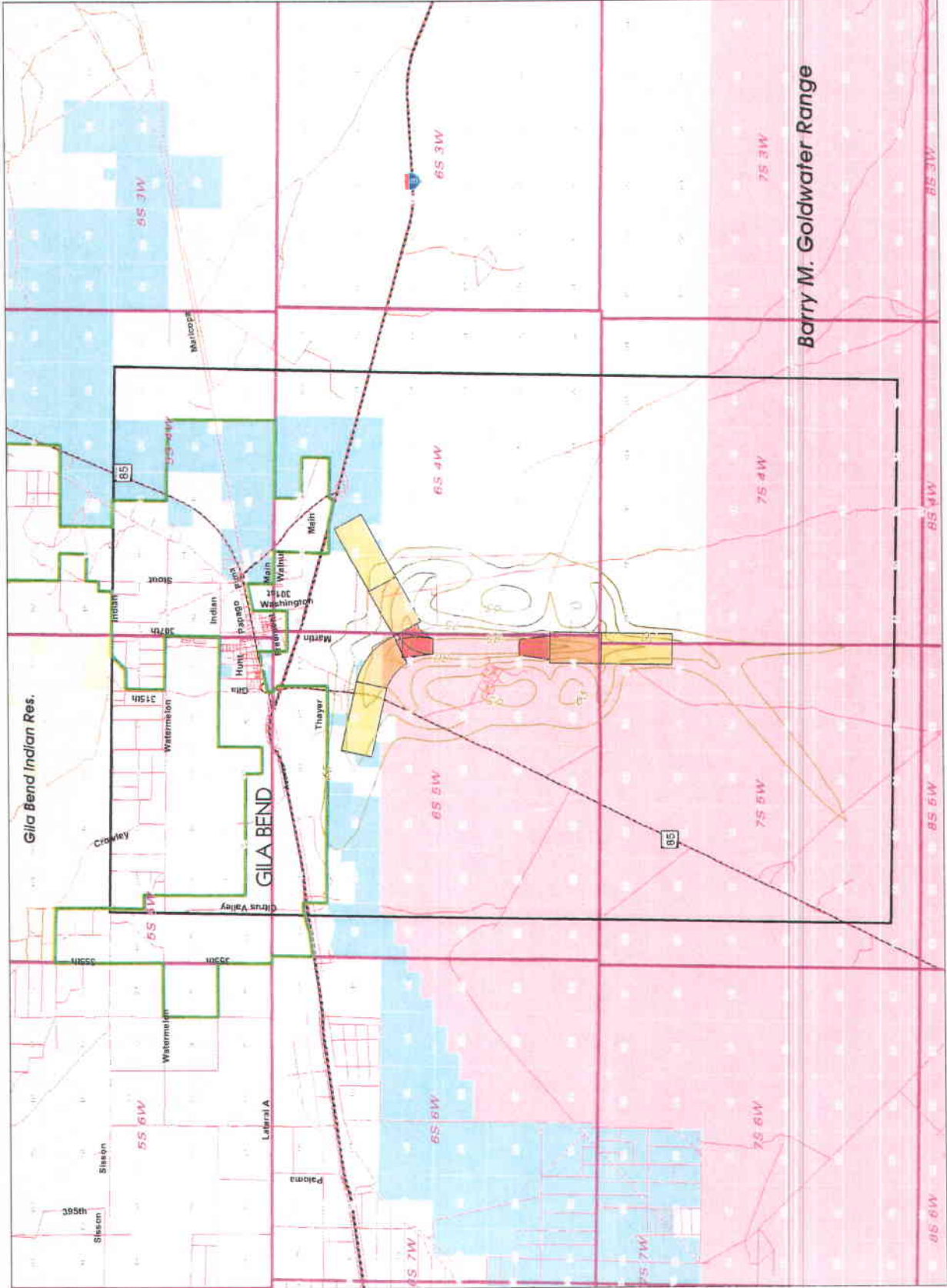
F - 16 Noise Contours

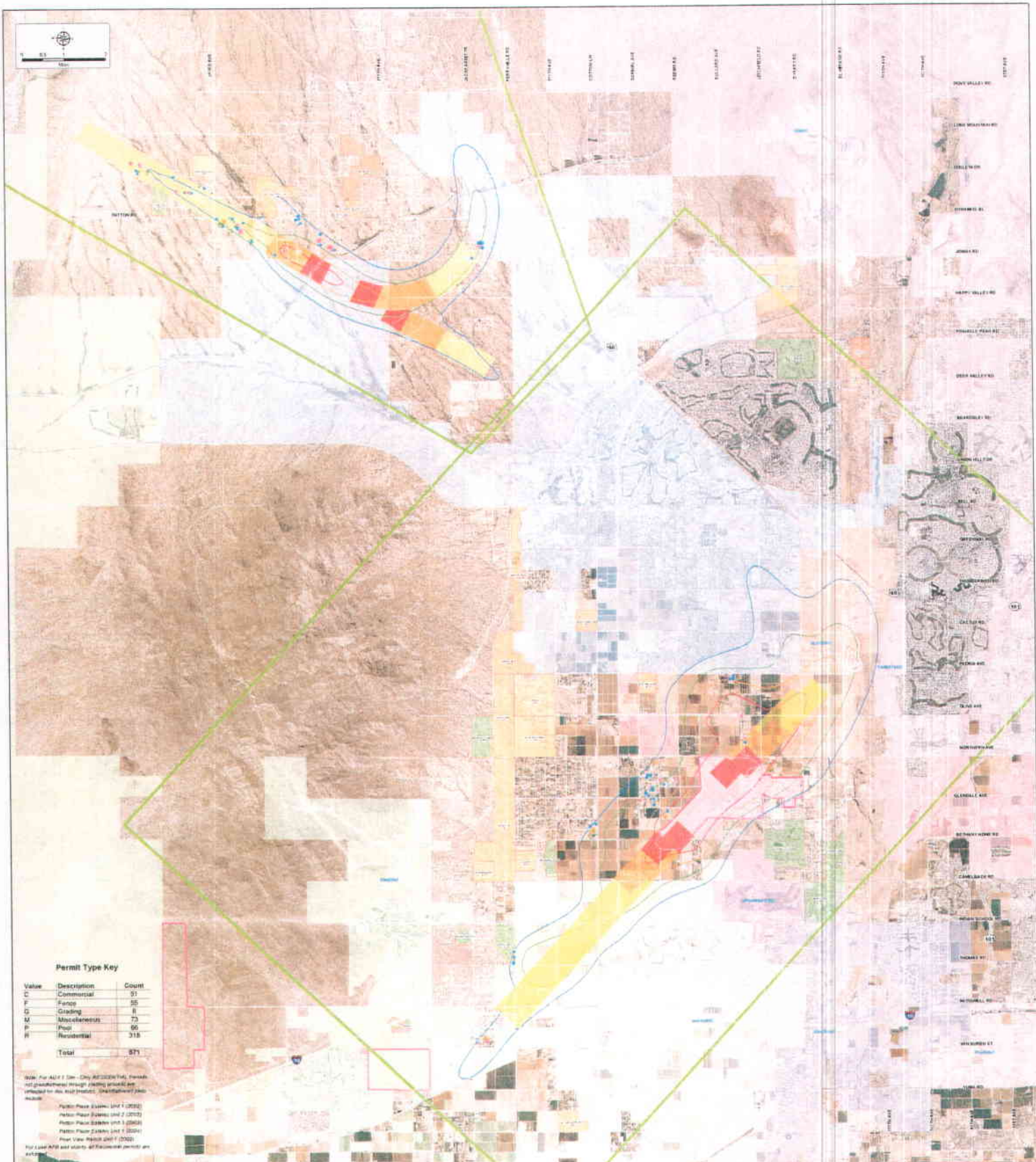
BLM
Forest
Indian Res.
Local or State Parks
Military
Natl. Parks
Bureau of Reclamation
Private
Wildlife
State Land
Counties
Cities
Highways
Major Arterials
Streets



March 1, 2004

Arizona State Land Department
ASLD. No other information shown is intended.
Produced by: Aerial Mapping / J. Turner, 17, 2004
Revised: 3/15/04. C:\proj\MapInfo\MapInfo.dwg, 10-3
Author: Data Sources: Luke AFB





Permit Type Key

Value	Description	Count
C	Commercial	31
F	Farm	95
G	Grading	81
M	Miscellaneous	73
P	Permit	90
R	Residential	315
Total		571

Note: For ALE 1.0m - City of Peoria (City of Peoria) has been notified of the noise contours through the planning process and is responsible for the final impact. (Development of the noise contours is the responsibility of the City of Peoria.)

Peoria Police Station Unit 1 (2012)
 Peoria Police Station Unit 2 (2012)
 Peoria Police Station Unit 3 (2012)
 Peoria Police Station Unit 4 (2012)
 Peoria Police Station Unit 5 (2012)
 Peoria Police Station Unit 6 (2012)
 Peoria Police Station Unit 7 (2012)
 Peoria Police Station Unit 8 (2012)
 Peoria Police Station Unit 9 (2012)
 Peoria Police Station Unit 10 (2012)



City of Peoria
Luke Air Force Base
 Residential Building Permit Activity (by Year)
 Luke Air Force Base and Auxiliary Field 1 and Proximity

Military Property Boundary
 Military Territory Boundary

Luke AFB Accident Potential Zones
 ALE 1.0m
 ALE 2.0m
 Clear Zone

Luke AFB Noise Contour
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 25
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Luke AFB Noise Contour
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MAC Development Areas 2004
 Development Status
 Active
 Construction
 Relinquished

Residential Permits From Maricopa County Planning
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City of Peoria Luke AFB Aux Field 2

Building Permit Activity
Gila Bend AFAF

Permit Type

- Manufactured
- Gila Bend Boundary
- Military Property

Gila Bend AFAF Accident Potential Zones

- APZ-I
- APZ-II
- Clear Zone

Gila Bend AFAF Noise Contours

- LDN
- 65
 - 70
 - 75
 - 80
 - 85



NOTE:
This map is based on impervious source data, subject to change and FOR GENERAL REFERENCE ONLY.

